IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 512 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FATESINGHBHAI MOTIBHAI LABANA

Versus

THE STATE OF GUJRAT

Appearance:

1. Special Criminal Application No. 512 of 2003

MR UM SHASTRI for Petitioner No. 1

Mr S S Patel, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/07/2003

ORAL JUDGEMENT

The petitioner herein has preferred this petition under Article 227 of the Constitution of India read with section 451 of the Code of Criminal Proceodure, 1973 (for

short, 'the Code') for setting aside the orders of the lower Courts and for getting interim custody of muddamal jeep bearing registration no.GJ-20-A-1157. The petitioner claims that he is the registered owner of the said vehicle and the said vehicle was seized by the Investigating Police Officer in Prohibition Offence Register No.191/2003 alleging that the vehicle carried illicit liquor without pass or permit. When the vehicle was seized, applications were made before the trial court and before the Sessions Court for release of the said vehicle during the pendency of the criminal case in question. The learned Magistrate dismissed the said application by order dated 13.3.2003. The matter was carried to the Sessions Court, Panchmahals at Godhra by way of Criminal Revision Application No.22/2003. There the learned Addl.Sessions Judge considered the rival contentions and directed the trial court to consider the decision of the Hon'ble Supreme Court in the case of Sunderbhai A Desai v. State of Gujarat, reported in 2003 (2) GLR 1337 and decide the matter accordingly. Then the learned Magistrate passed an order on 30.4.2003 directing that the vehicle be put to auction and sale proceeds be credited to Government Treasury. Feeling aggrieved by the said order, the petitioner has preferred this petition before this Court.

2. Rule was issued. In response to the service of notice of rule, Mr S S Patel, learned APP appears for the State.

On hearing it is found that the vehicle was seized in an offence under the Bombay Prohibition Act, 1949. The petitioner being the registered owner of the said vehicle was not present when the offence was committed. Learned Advocate for the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of Sunderbhai A Desai (supra), wherein it has been laid down that the mdudamal vehicle may be handed over to the person entitled to it. In view of the facts and circumstances and considering the above decision of the Supreme Court, in my opinion this is a fit case for exercising constitutional powers under Article 227 of the Constitution of India for handing over the vehicle to the petitioner by way of interim arrangement pending hearing and disposal of the criminal case against the concerned accused person.

3. For the foregoing reasons, this petition is allowed. The muddamal vehicle shall be entrusted to the petitioner on the following conditions:

i. The petitioner shall furnish solvent surety and P.R. in a sum of One Lakh subject to the satisfaction of the trial court.

ii. The petitioner shall produce the said vehicle as per the order of the court.

iii. The petitioner shall not sell or transfer the vehicle, its ownership or custody till the disposal of the case in question.

iv. The petitioner shall not permit user of the said vehicle for any illegal purpose.

v. The petitioner agrees that he will always accompany the vehicle as and when the vehicle is put to motion. He shall furnish an undertaking to that effect before the trial court.

vi. This order will be subject to the order of the final disposal of the muddamal vehicle at the final disposal of the criminal case in which the muddamal vehicle has been attached.

Rule is made absolue. D.S. permitted.

[D P Buch, J.]

msp